

ASSEMBLY BILL

No. 817

Introduced by Assembly Member Calderon

February 26, 2015

An act to amend Section 22584 of the Business and Professions Code, relating to privacy.

LEGISLATIVE COUNSEL'S DIGEST

AB 817, as introduced, Calderon. Privacy: students.

Existing law, commencing on January 1, 2016, prohibits an operator from knowingly engaging in targeted advertising to students or their parents or legal guardians using covered information, as defined, amassing a profile of a K–12 student, selling a student's information, or disclosing covered information, as provided. Existing law defines an "operator" as the operator of an Internet Web site, online service, online application, or mobile application with actual knowledge that the site, service, or application is used primarily for K–12 school purposes and was designed and marketed for K–12 school purposes.

This bill would redefine an "operator" as the operator of an Internet Web site, online service, online application, or mobile application that, pursuant to a contract or agreement with a school or district, establishes the site, service, or application used primarily for K–12 school purposes and was designed and marketed primarily for K–12 school purposes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 22584 of the Business and Professions
2 Code is amended to read:

3 22584. (a) For the purposes of this section, “operator” means
4 the operator of an Internet Web site, online service, online
5 application, or mobile application ~~with actual knowledge that~~ *that,*
6 *pursuant to a contract or agreement with a school or district,*
7 *establishes the site, service, or application that is used primarily*
8 *for K–12 school purposes and was designed and marketed*
9 *primarily for K–12 school purposes.*

10 (b) An operator shall not knowingly engage in any of the
11 following activities with respect to their site, service, or application:

12 (1) (A) Engage in targeted advertising on the operator’s site,
13 service, or application, or (B) target advertising on any other site,
14 service, or application when the targeting of the advertising is
15 based upon any information, including covered information and
16 persistent unique identifiers, that the operator has acquired because
17 of the use of that operator’s site, service, or application described
18 in subdivision (a).

19 (2) Use information, including persistent unique identifiers,
20 created or gathered by the operator’s site, service, or application,
21 to amass a profile about a K–12 student except in furtherance of
22 K–12 school purposes.

23 (3) Sell a student’s information, including covered information.
24 This prohibition does not apply to the purchase, merger, or other
25 type of acquisition of an operator by another entity, provided that
26 the operator or successor entity continues to be subject to the
27 provisions of this section with respect to previously acquired
28 student information.

29 (4) Disclose covered information unless the disclosure is made:

30 (A) In furtherance of the K–12 purpose of the site, service, or
31 application, provided the recipient of the covered information
32 disclosed pursuant to this subparagraph:

33 (i) Shall not further disclose the information unless done to
34 allow or improve operability and functionality within that student’s
35 classroom or school; and

36 (ii) Is legally required to comply with subdivision (d);

37 (B) To ensure legal and regulatory compliance;

38 (C) To respond to or participate in judicial process;

1 (D) To protect the safety of users or others or security of the
2 site; or

3 (E) To a service provider, provided the operator contractually
4 (i) prohibits the service provider from using any covered
5 information for any purpose other than providing the contracted
6 service to, or on behalf of, the operator, (ii) prohibits the service
7 provider from disclosing any covered information provided by the
8 operator with subsequent third parties, and (iii) requires the service
9 provider to implement and maintain reasonable security procedures
10 and practices as provided in subdivision (d).

11 (c) Nothing in subdivision (b) shall be construed to prohibit the
12 operator's use of information for maintaining, developing,
13 supporting, improving, or diagnosing the operator's site, service,
14 or application.

15 (d) An operator shall:

16 (1) Implement and maintain reasonable security procedures and
17 practices appropriate to the nature of the covered information, and
18 protect that information from unauthorized access, destruction,
19 use, modification, or disclosure.

20 (2) Delete a student's covered information if the school or
21 district requests deletion of data under the control of the school or
22 district.

23 (e) Notwithstanding paragraph (4) of subdivision (b), an operator
24 may disclose covered information of a student, as long as
25 paragraphs (1) to (3), inclusive, of subdivision (b) are not violated,
26 under the following circumstances:

27 (1) If other provisions of federal or state law require the operator
28 to disclose the information, and the operator complies with the
29 requirements of federal and state law in protecting and disclosing
30 that information.

31 (2) For legitimate research purposes: (A) as required by state
32 or federal law and subject to the restrictions under applicable state
33 and federal law or (B) as allowed by state or federal law and under
34 the direction of a school, school district, or state department of
35 education, if no covered information is used for any purpose in
36 furtherance of advertising or to amass a profile on the student for
37 purposes other than K-12 school purposes.

38 (3) To a state or local educational agency, including schools
39 and school districts, for K-12 school purposes, as permitted by
40 state or federal law.

1 (f) Nothing in this section prohibits an operator from using
2 deidentified student covered information as follows:

3 (1) Within the operator’s site, service, or application or other
4 sites, services, or applications owned by the operator to improve
5 educational products.

6 (2) To demonstrate the effectiveness of the operator’s products
7 or services, including in their marketing.

8 (g) Nothing in this section prohibits an operator from sharing
9 aggregated deidentified student covered information for the
10 development and improvement of educational sites, services, or
11 applications.

12 (h) “Online service” includes cloud computing services, which
13 must comply with this section if they otherwise meet the definition
14 of an operator.

15 (i) “Covered information” means personally identifiable
16 information or materials, in any media or format that meets any
17 of the following:

18 (1) Is created or provided by a student, or the student’s parent
19 or legal guardian, to an operator in the course of the student’s,
20 parent’s, or legal guardian’s use of the operator’s site, service, or
21 application for K–12 school purposes.

22 (2) Is created or provided by an employee or agent of the K–12
23 school, school district, local education agency, or county office of
24 education, to an operator *for K–12 school purposes*.

25 (3) Is gathered by an operator through the operation of a site,
26 service, or application described in subdivision (a) and is
27 descriptive of a student or otherwise identifies a student, including,
28 but not limited to, information in the student’s educational record
29 or email, first and last name, home address, telephone number,
30 email address, or other information that allows physical or online
31 contact, discipline records, test results, special education data,
32 juvenile dependency records, grades, evaluations, criminal records,
33 medical records, health records, social security number, biometric
34 information, disabilities, socioeconomic information, food
35 purchases, political affiliations, religious information, text
36 messages, documents, student identifiers, search activity, photos,
37 voice recordings, or geolocation information.

38 (j) “K–12 school purposes” means purposes that customarily
39 take place at the direction of the K–12 school, teacher, or school
40 district or aid in the administration of school activities, including,

1 but not limited to, instruction in the classroom or at home,
2 administrative activities, and collaboration between students, school
3 personnel, or parents, or are for the use and benefit of the school.

4 (k) This section shall not be construed to limit the authority of
5 a law enforcement agency to obtain any content or information
6 from an operator as authorized by law or pursuant to an order of
7 a court of competent jurisdiction.

8 (l) This section does not limit the ability of an operator to use
9 student data, including covered information, for adaptive learning
10 or customized student learning purposes.

11 (m) This section does not apply to general audience Internet
12 Web sites, general audience online services, general audience
13 online applications, or general audience mobile applications, even
14 if login credentials created for an operator's site, service, or
15 application may be used to access those general audience sites,
16 services, or applications.

17 (n) This section does not limit Internet service providers from
18 providing Internet connectivity to schools or students and their
19 families.

20 (o) This section shall not be construed to prohibit an operator
21 of an Internet Web site, online service, online application, or
22 mobile application from marketing educational products directly
23 to parents so long as the marketing did not result from the use of
24 covered information obtained by the operator through the provision
25 of services covered under this section.

26 (p) This section does not impose a duty upon a provider of an
27 electronic store, gateway, marketplace, or other means of
28 purchasing or downloading software or applications to review or
29 enforce compliance of this section on those applications or
30 software.

31 (q) This section does not impose a duty upon a provider of an
32 interactive computer service, as defined in Section 230 of Title 47
33 of the United States Code, to review or enforce compliance with
34 this section by third-party content providers.

35 (r) This section does not impede the ability of students to
36 download, export, or otherwise save or maintain their own student
37 created data or documents.

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